

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

NAS SURETY GROUP,

Plaintiff,

Civil Action No. 04-10459MLW

V.

TINKER ELECTRICAL CORPORATION
and WILLIAM F. TINKER,

Defendants.

AFFIDAVIT OF JEFFREY GOLDBERG

I, Jeffrey Goldberg, being duly sworn, hereby depose and state as follows:

1. I am employed by NAS Surety Group (“NAS”) and have full authority to adjust, manage, and prosecute this claim on behalf of NAS. I make the statements that follow on personal knowledge, or on the basis of business records of NAS, of which I am the keeper.

2. At all relevant times hereto, NAS has been in the business of, among other things, issuing performance and payment surety bonds on behalf of contractors to secure their performance of construction work for various government agencies and private parties.

3. At all times relevant hereto, Defendant Tinker Electrical Corporation (“Tinker”) was in the business of electrical contracting.

4. On or about February 28, 2001, Tinker Electrical Corporation and William F. Tinker (collectively “Defendants”) executed a General Agreement of Indemnity (“GAI”). A true and correct copy of the GAI is attached hereto as Exhibit A and incorporated herein by reference.

5. Pursuant to the terms and conditions of the GAI, the Defendants are required to “. . . exonerate, hold harmless and indemnify [NAS] from and against all liability, loss, costs, damages, fees of attorneys and consultants, and other expenses, including interest, which [NAS] may sustain or incur by reason of, or in consequence of, the execution of such bonds and any renewal, continuation or successor thereof, including but not limited to, sums paid or liabilities incurred in settlement of, and expenses paid or incurred in connection with claims, suits or judgment under such bonds, expenses paid or incurred in enforcing the terms hereof, in procuring or attempting to procure a release from liability, or in recovering or attempting to recover losses or expenses paid or incurred, as aforesaid.”

6. In reliance on the GAI, NAS, as surety, issued payment and performance bonds (collectively “the Bonds”) on behalf of Tinker, as principal, for work to be performed on the following projects: (1) Thomas Carroll Elementary School (“Carroll Project”); (2) Wayland Public Safety Building (“Wayland Project”); and (3) Pierce Elementary School (“Pierce Project”) (collectively “the Projects”). True and correct copies of the Bonds are attached hereto as Exhibit B.

7. Subsequent to NAS’s issuance of the Bonds, Tinker defaulted on its obligations and, as a result, NAS received numerous claims on the Bonds.

8. NAS, in good faith, and pursuant to its obligations as surety, resolved each bond claim, and incurred losses in the investigation, payment, and defense of same.

9. NAS has also sustained losses in the form of attorneys’ fees, consultant’s fees and in-house expenses, and expects to sustain further losses and incur further expenses as a result of this litigation.

10. NAS made demand upon Defendants Tinker Electrical Corporation and William Tinker to hold NAS harmless pursuant to the specific terms and conditions of the GAI.

11. Despite NAS's demand, Defendants have failed and refused to indemnify NAS.

12. As a result of NAS's issuance of the Bonds at the request and on behalf of Tinker, NAS has incurred, to date, a total loss of \$659,460.91, excluding interest.

13. The following is an itemized statement of NAS's losses and expenses incurred in connection with the various claims:

<u>CLAIMS PAID BY NAS</u>		<u>AMOUNT</u>
TOTAL CLAIMS PAID BY NAS:		\$574,800.87
		(575,125.87 claims paid less \$325.00 recovery)
<u>EXPENSES INCURRED BY NAS</u>		<u>AMOUNT</u>
NAS Expenses		\$ 84,358.61
<u>ATTORNEYS' FEES AND COSTS</u>		<u>AMOUNT</u>
UNBILLED ATTORNEYS' FEES AND COSTS		\$301.43
(through August 12, 2004)		
TOTAL NAS LOSS (excluding interest)		\$659,460.91

14. Defendants have not reimbursed NAS for these losses, costs, and expenses incurred in connection with the claims against the Bonds in accordance with the specific terms and conditions of the GAI.

Signed under the penalties of perjury this _____ day of August, 2004.

/s/ Jeffrey Goldberg

Jeffrey Goldberg